

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 1:22-CV-22518-DPG

MOBB HEALTH CARE LTD.,

Plaintiff,

vs.

FELIX GERSHGORIN,
KLARA GERSHGORIN, and
INNO MEDICAL, LLC.

Defendants.

JOINT SCHEDULING REPORT

Pursuant to Rules 16(b) and 26(f) of the Federal Rules of Civil Procedure and Local Rule 16.1(b) of the Local Rules for the United States District Court for the Southern District of Florida, and in compliance with this Court's Paperless Order Requiring Joint Scheduling Report and Proposed Scheduling Order [DE 17], the Parties hereby submit their Joint Discovery Plan and Scheduling Report addressing discovery and other pretrial issues and state as follows:

I. REPORT REGARDING THE PARTIES' RULE 26(F) CONFERENCE

A. Proposed Discovery Plan

1. Changes in Timing, Form or Requirements Under Rule 26(a) of the Federal Rules of Civil Procedure, including a statement of when initial disclosures will be made.

The Parties stipulate and agree to exchange their Rule 26(a)(1) Initial Disclosures by no later than October 28, 2022. The Parties stipulate and agree to exchange their Rule 26(a)(2) Expert Disclosures by no later than May 13, 2023. Rebuttal Expert Disclosures shall be made no later

than June 13, 2023. The Parties do not believe that any other changes to the Rule 26(a) disclosures are necessary.

2. Subjects on Which Discovery May Be Needed, When Discovery Should Be Completed, and How Discovery Should be Conducted.

The Parties anticipate that discovery will be needed, *inter alia*, on the following subjects:

Plaintiff expects to seek discovery on claim construction, patent infringement, patent validity, unfair competition, and damages.

Defendants expect to seek discovery on conception and reduction to practice of the claimed invention; claim construction; evidence of infringement of design patent; evidence of invalidity of design patent, unfair competition and damages.

Discovery will be conducted pursuant to the Federal Rules of Civil Procedure and the Local Rules for the Southern District of Florida. The Parties propose that fact and expert discovery shall be completed on or before July 10, 2023.

B. Any Issues Relating to Disclosure or Discovery of Electronically Stored Information (ESI), Including the Form or Forms in Which it Should Be Produced.

At this time, the Parties believe that there exist hard copies of documents that are material to their claims and defenses in this action as well as ESI. The parties agree to work together to address any issues related to ESI discovery and do not believe there is a need for Court intervention at this time. However, if the need arises in the future, the parties will promptly bring the matter before the Court.

C. Any Issues Relating to Claims of Privilege or of Protection as Trial Preparation Material.

The Parties will submit a proposed joint protective/confidentiality order to the Court that is intended to govern the Parties' claims of privilege and protection of confidential documents.

D. Whether Changes Should Be Made to Limitations on Discovery.

None at this time.

E. Other Orders that Should Be Entered by the Court Pursuant to Rules 16(b)(c), or 26(c) of the Federal Rules of Civil Procedure.

As stated above, the Parties will submit a proposed Confidentiality and Protective Order in this matter for the Court's approval. The Parties have also submitted a joint proposed scheduling order for the Court's consideration. At this time, the parties do not anticipate the need for any further orders under Rule 26(c) or Rule 16(b) and (c).

II. REPORT REGARDING THE PARTIES' RULE 16.1 CONFERENCE

A. Case Track.

The parties believe this case should be assigned to the standard case track.

B. Likelihood of Settlement.

The Parties are mutually hopeful settlement is likely and will explore potential resolution as the case develops. The Parties will promptly notify the Court if a settlement is reached.

C. Likelihood of Appearance of Additional Parties.

It is unknown, at this time, if any additional parties will be added. If any additional parties are required to be added, said parties will be added by the deadline adopted by the Court as set forth below.

D. Proposed Limits on Time

The parties propose the following dates for those items listed in S.D. Fla. L. R. 16.1(b)(2)(C):

- (i) To join other parties and amend the pleadings:

The Parties propose a cutoff date of November 18, 2022, to join other parties and amend the pleadings.

- (ii) To file and hear motions:

The Parties propose a cutoff date of August 25, 2023, to file all dispositive motions, including those regarding summary judgment and *Daubert*. All other pretrial motions, including motions *in limine*, shall be filed no later than October 25, 2023.

(iii) To complete discovery:

Fact Discovery: July 10, 2023.

Expert Discovery: July 10, 2023.

E. Proposals for the Formulation and Simplification of Issues.

None at this time. The Parties will endeavor to streamline the case to the fullest extent possible. Because this is a patent infringement case, the parties have included within their proposed scheduling order dates relating to disclosure of invalidity and non-infringement contentions and claim construction.

F. Necessity or Desirability of Amendments to the Pleadings.

At this time, the Parties do not anticipate amending the pleadings.

G. Possibility of Obtaining Admissions of Facts and Documents.

At this time, it is unknown whether admissions of fact may be obtained, whether authenticity of documents will be an issue, or whether the Parties will need advance rulings from the Court as to certain evidentiary matters. The Parties agree to meet after the applicable discovery completion deadline to endeavor to resolve as many evidentiary issues as possible by means of admissions and stipulations.

H. Suggestions for the Avoidance of Unnecessary Proof and Cumulative Evidence.

None at this time. The parties will work cooperatively to avoid the unnecessary proof and of cumulative evidence.

I. Referring Matters to a Magistrate Judge or Master.

The Parties consent to referring discovery matters and non-dispositive motions to a Magistrate Judge.

J. Preliminary Estimate of Time for Trial.

At this time, the Parties estimate that this trial will take approximately five (5) to seven (7) days.

K. Requested Date for Trial.

The parties request the following proposed dates for pretrial conference and trial:

Pretrial Conference: January 2024.

Trial: Commencing the two-week period beginning January 29, 2024.

L. Other Information Helpful to the Court.

At this time, the Parties are unaware of the existence of any other matters that may aid the Court in the fair and expeditious administration and disposition of this case.

III. Joint Proposed Scheduling Order (L.R. 16.1(b)(3)).

Attached hereto as Exhibit A. The parties have deviated from the provided form to incorporate deadlines related to the patent issues.

Dated: October 14, 2022

Respectfully submitted,

<p>KOZYAK, TROPIN & THROCKMORTON <i>Counsel for Plaintiffs</i> 2525 Ponce de Leon Boulevard, 9th Floor Coral Gables, Florida 33134 Tel.: 305-372-1800 Fax: 305-372-3508</p> <p><u>/s/ Michael R. Lorigas</u> Javier A. Lopez, Esq. Fla. Bar No. 16727 jal@kttlaw.com Michael R. Lorigas, Esq. Florida Bar No. 123597 mlorigas@kttlaw.com Rasheed K. Nader, Esq. Florida Bar No. 1002362 rnader@kttlaw.com</p>	<p>JASON B. GILLER, P.A. <i>Counsel for Defendants/Counter-Claim Plaintiffs, Felix Gershgorin, Klara Gershgorin, and Inno Medical, LLC</i> 1111 Brickell Ave. Suite 1550 Miami, FL 33131 Tel: (305) 999-1906</p> <p><u>/s/ Robert M. Schwartz</u> Jason B. Giller, Esq. Fla. Bar No. 77441 jason@gillerpa.com Hilary A. Schein, Esq. Fla. Bar No. 1019115 hilary@gillerpa.com</p> <p>ROBERT M. SCHWARTZ, P.A. <i>Counsel for Defendants/Counter-Claim Plaintiffs, Felix Gershgorin, Klara Gershgorin, and Inno Medical, LLC</i> 2445 Hollywood Blvd. P.O. Box 221470 Hollywood, FL 33022 Tel: (954) 924-0707 Fax: (954) 924-0717</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------